

REMARKS

Applicant acknowledges receipt of a Notice of Non-Compliance Dated December 10, 2008. The Notice incorrectly states that an amendment document is non-compliant. Applicant respectfully requests reconsideration and withdrawal of the Notice of Non-Compliance for the reasons set forth below.

Following issuance of a Notice of Allowance, Applicant filed a Request for Continued Examination together with an IDS on September 8, 2008 in compliance with 37 C.F.R. 1.114(a)(1) and 37 C.F.R. 1.114(c). No reply to an Office Action under 35 U.S.C. 132 was outstanding at the time the Request for Continued Examination was filed. Thus, the IDS was the sole submission and was sufficient by itself to meet the submission requirements of 37 C.F.R. 1.114(c).

The Notice of Non-Compliance states that "[t]he status of the claims as listed in the claims listing filed on March 26, 2008 is no longer the same." This, however, is not a proper basis on which to issue a Notice of Non-Compliance.

The status of the claims as indicated in the March 26, 2008 was correct at the time the March 26, 2008 Amendment and Reply was executed and submitted to the USPTO. Neither the MPEP nor 37 C.F.R. 1.114 requires an applicant to submit an updated listing of the claims at the time an RCE is filed. Reconsideration and withdrawal of this Notice of Non-Compliance is respectfully requested.

Applicant is submitting this reply since it appears that the Notice of Non-Compliance may have been issued inadvertently. Applicant expressly reserves the right to request review of this Notice of Compliance via petition

CONCLUSION

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing or a credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date 1/12/09

By P.D.S.

FOLEY & LARDNER LLP
Washington Harbour
3000 K Street NW, Suite 500
Washington, D.C. 20007-5143
Telephone: (202) 672-5540
Facsimile: (202) 672-5399

Paul D. Strain
Attorney for Applicant
Registration No. 47,369